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In re Application of:
James S. Brunson et al. : DECISION ON PETITION TO
Serial No.: 09/217,235 : WITHDRAW THE HOLDING
Filed: December 21, 1998 : OF ABANDONMENT
Attorney Docket No.: SAMS01-00059 :

This is a decision on the petition to withdraw the holding of abandonment under 37 C.F.R. § 1.181 filed via facsimile transmission on April 13, 2005. According to the date on the petition, a Certificate of Mailing on a separate sheet of paper, and a post card receipt, this petition was first submitted by first class mail on April 21, 2004 and received in the Office of Petitions on April 27, 2004 but was not matched with the file.

The petition is **GRANTED**.

The application was held abandoned for failure to timely file a proper response to the Office action mailed on October 14, 1999. A Notice of Abandonment was mailed on April 6, 2004.

Petitioner asserts that a response to the Office action was timely filed on January 19, 2000. To support this assertion, petitioner has submitted a copy of the response (an amendment and a letter to the draftsman with two sheets of formal drawings) and a copy of a stamped return postcard which properly identifies and acknowledges receipt of the response by the Patent and Trademark Office (PTO) on January 19, 2000. The copy of the response includes signed Certificates of Mailing dated January 14, 2000 so the original response would have been timely under the provisions of 37 C.F.R. § 1.8 (a)(1) if it had been received and matched with the application file.

A review of the application file record reveals that the response having been acknowledged on the stamped return postcard as being received in the PTO on January 19, 2000 is not of record in the application file and cannot be located. However, M.P.E.P. § 503 states that a postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO. Accordingly, it is concluded that the response was timely received but lost after receipt thereof.

For the above stated reason, the petition is granted. The Notice of Abandonment mailed April 6, 2004 is hereby **VACATED** and the holding of abandonment is withdrawn.

The copy of the response filed with the petition on April 13, 2005 is accepted since the originally submitted response is lost.

The Technical Support Staff will enter the response filed with the petition on April 13, 2005 into the Patent Application Locating and Monitoring System (PALM) and the examiner will prepare an action based upon that response.

Any inquiries regarding this decision should be directed to Edward Westin at (571) 272-1638.


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